

105

CRM-M-36370-2025
Decided on: 11.07.2025

Surrender

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sauhard Singh, Advocate
for the petitioner.

Ms. Trishanjali Sharma, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
06	08.01.2025	Bhuna, District Fatehabad, Haryana	21(b), 27A, 29 of NDPS Act

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.

2. Per paragraph 12 of the bail petition, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	150	2019	NDPS Act	--
2	213	2021	NDPS Act	--

3. The facts and allegations are taken from the order dated 27.05.2025 (Annexure P-4) passed by the Special Judge, Fast Track under NDPS Act, Fatehabad. On 08.01.2025 based on chance recovery, the Police seized 08 grams 21 milligram of heroin from co-accused Anand Gill @ Ghoda and Sandeep. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973.

4. During custodial interrogation, the main accused confessed before the Police officer that they had purchased the drugs from the petitioner. Based on such confession before the police, the petitioner was arraigned as an accused. Apprehending arrest, he filed for anticipatory bail from the Sessions Court, which denied him bail. Feeling aggrieved, he has invoked the concurrent jurisdiction of this Court under S. 482 BNSS, 2023.

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5. Petitioner's counsel on instructions submits that petitioner shall not repeat the offence and not indulge himself in the offence involving the commercial or intermediate quantity or the offence which falls under Sections 19/24/27A of NDPS Act. He further submits that if the petitioner involves himself in the said offences, he has no objection if the State files application for cancellation of bail in all FIRs under NDPS Act, pending against the petitioner. The petitioner's counsel further prays for bail by imposing any stringent conditions and contends that pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

6. The State's counsel opposes bail.

REASONING:

7. Given the undertaking by the petitioner, this Court deems it appropriate to give one opportunity to the petitioner to course correct. The evidence collected so far consists of disclosure statements. Such statements can be proven subject to the mandatory restrictions imposed in S. 25 & 26 of the Indian Evidence Act, 1872/ S. 23 of BSA, 2023.

8. Given the quantity involved, the rigors of S. 37 of the NDPS Act do not apply in the present case.

9. Section 2 (vii-a) of the NDPS Act defines commercial quantity as greater than the quantity specified in the schedule. Section 2 (xxiii-a) defines a small quantity as a quantity less than the quantity specified in the table of the NDPS Act. The remaining quantity falls in an undefined category, generally called an intermediate quantity. All sections in the NDPS Act specify an offence and mention the minimum and maximum sentence, depending upon the quantity of the substance. The commercial quantity mandates a minimum sentence of ten years of imprisonment and a minimum fine of Rupees One hundred thousand, and bail is subject to the riders mandated in S. 37 of the NDPS Act. When the quantity is less than commercial, the restrictions of Section 37 of the NDPS Act will not attract, and the factors for bail become similar to the offence regular statutes.

10. Pre-trial incarceration should not be a replica of post-conviction sentencing. The evidence might be prima facie sufficient to launch prosecution or to frame charges, but this Court is not considering the evidence at that stage but is analyzing it for the stage of anticipatory bail. An analysis of the above does not justify custodial interrogation or pre-trial incarceration.

11. The evidence collected might be prima facie sufficient to launch prosecution or even to frame the charges; however, it is insufficient for the purpose of denying bail.

12. Given the penal provisions invoked, the legal admissibility of evidence collected against the petition, coupled with the prima facie analysis of the nature of allegations, and

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the other factors peculiar to this case, there would be no justifiability for custodial interrogation or pre-trial incarceration at this stage.

13. Given the above, without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for anticipatory bail.

14. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the Arresting Officer, and if the matter is before a Court, then the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Officer/Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

15. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

16. The bail order is subject to the petitioner’s complying with the following terms.

17. The petitioner is directed to join the investigation as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, the prosecution will be open to seeking cancellation of the bail. During the investigation, the petitioner shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

18. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offense in this FIR, and if the new section prescribes a maximum sentence that is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above; then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

19. **This bail is conditional, and the foundational condition is that if the petitioner commits any offence under the NDPS Act, where the quantity involved is more than**

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half of the intermediate or commercial quantity, or violates S. 19, 24, or 27-A of the NDPS Act, then the State shall apply for cancellation of this bail before the Trial Court, which shall be eligible, authorized, and shall have the discretion to cancel this bail.

20. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

21. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

22. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

11.07.2025
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Whether speaking/reasoned: Yes
Whether reportable: No.